IN THE SUPREME COURT OF FLORIDA

CLYDE McPHADDER,

Petitioner,

v. CASE NO. 65,724

STATE OF FLORIDA,

Respondent.

INITIAL BRIEF OF PETITIONER

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INITIAL BRIEF OF PETITIONER

I PRELIMINARY STATEMENT

The petitioner was the defendant in the trial court and was the appellee in the District Court of Appeal.

References to the record will be designated "R" and references to the transcript of the hearing will be designated "TR." The appendix will be designated "app".

A copy of the decision under review, State v. McPhadder, 452 So.2d 1017 (Fla. 1st DCA 1984), is included in the appendix.

II STATEMENT OF THE CASE AND FACTS

Petitioner was charged in the Circuit Court of Alachua County with three counts of possession of less than 20 grams of cannabis and three counts of delivery of cannabis (R-1-2). The charges stemmed from three separate incidents of alleged sale by petitioner to Mae Campbell, an informer for the police. An undercover police officer, Ella Daniels, was present during the transactions (TR-19,20).

After the selection of the jury, but before it was sworn, the state conceded that the informer to whom the sales had allegedly been made was not present for the trial. Petitioner made a motion in limine to suppress tape recordings of the conversations between Campbell and a person claimed by the state to be petitioner. The grounds of the motion were that Campbell's testimony was required to prove that she had consented to interception of the conversations (TR-11, 12). The state produced testimony of the undercover officer, Daniels, who said that she had been present during all the conversations between the suspect and Campbell even though she (Daniels) had not participated by speaking. Daniels testified that she consented to the interceptions (TR-18-25).

The motion to suppress was denied. The trial judge found that Officer Daniels had been a party to the conversations and all other parties had been aware of her presence (TR-26,27; R-6,7). She could, therefore, intercept the conversation.

Petitioner then made a second motion in limine to strike from the tape recordings any statements made by the absent informer, Campbell, and particularly those identifying petitioner by name, on the ground that they would be hearsay (TR-27,28). The pertinent portion of the oral motion was:

> Since Mae Campbell will not be present, the brunt of all conversations on the tapes and the most distinguishable portion of the tape are all statements made by Mae Campbell. Our argument would be, the contents of the tape are all hearsay as to Mae Campbell's statement. She will not be coming in.
>
> As to at least one of the tapes, maybe more, she makes reference to calling out, "Hey, Clyde." [Petitioner's first name is Clyde] So she makes a statement. But I anticipate the state is going to try to argue that that is a form of identification.
>
> Since she is not going to be a witness, the State is going to be able to put forward to the jury evidence that they will argue is identification without the defense ability to cross examine that witness as to her knowledge as to how she made the statement "Hey, Clyde," nor are we going to be able to attack her credibility as a person as a witness in this particular case. There is no exception under the hearsay rule that would encompass allowing those conversations or the statements of Mae Campbell to come before the jury. And as such, I would ask the Court to either, one, strike the tapes from evidence, or two, excise those portions of the tapes in which Mae Campbell is making statements because they are rank hearsay. And if you allow them in, you are letting Mae Campbell testify before the jury without my ability to cross examine her as to her knowledge as to what she said or attack her as to her

credibility as a witness.

(T-27,28)

In response the state claimed that Campbell's statements were not inadmissible hearsay because they were not to prove the truth of the matter asserted; but the state also asserted that the purpose would be "showing that Mr. McFadder was a participant in the natcotics transaction" (TR-31); and again "to show Mr. McFadder's participation in the transaction" (TR-32).

The trial judge granted petitioner's motion and ordered "the statements of Mae Campbell which are contained on tape recorded statements which were to have occurred allegedly during three drug transactions with the [petitioner] are hereby stricken and may not be introduced into evidence...." (R-5).

The state filed a notice of appeal to review this ruling, described as "a final order granting the defendant's motion to suppress evidence, to wit: Defendant's motion in limine to strike statements of informant" (R-8). In the first district court of appeal the state argued that

> Ms. Campbell's statements on the tape would not be hearsay because they would not be submitted to prove the truth of the matters she asserted (i.e. that she wanted to buy drugs for her own use and Daniels' use), but rather would be submitted as the best evidence that appellee [petitioner] had committed these crimes. (state's initial brief at 4) (app. 1)

Petitioner raised the jurisdictional question whether an appeal could be taken by the state from a pretrial order

striking evidence on grounds unrelated to search and seizure. On the merits, petitioner contended the order was correct because the statements of Campbell on the tape were identification of a person and were inadmissible hearsay if the declarant (Campbell) did not testify. (appellee's brief at 8,9; app. 2,3).

The district court addressed the jurisdictional issue and the merits.[1] It first held that the order was properly reviewable under Fla.R.App.P. 9.140(c)(1)(B), which grants the right to appeal an order

> suppressing before trial confessions, admissions or evidence obtained by search and seizure:

The court said:

> Although the question on appeal is not one involving a search and seizure issue, the evidence which was the subject of the order appealed was "obtained by search and seizure" and was suppressed before trial. Therefore, despite the procedural treatment of a similar appeal as a petition for writ of certiorari by our sister court in State v. Steinbrecher, 409 So.2d 510 (Fla. 3d DCA 1982), we find this question reviewable on direct appeal pursuant to rule 9.140(c)(1)(B).

452 So.2d at 1018.

The court then reversed the trial judge's order striking the taped statements, saying:

> Addressing the merits of the issue on appeal, the record indicates that prior

[1] State v. McPhadder, 452 So.2d 1017 (Fla. 1st DCA 1984).

> to trial appellee moved to exclude the taped statements of Ms. Campbell on the ground that her statements are inadmissible hearsay since she will be unavailable at trial. However, the record shows that Ms. Campbell's statements were not being offered by the state to prove the truth of the matters she asserted thereon, but instead her statements were being presented into evidence for the purpose of showing that appellee engaged in the conversation with Ms. Campbell and took part in plans to supply illegal drugs to her. Therefore, her recorded statements are not hearsay and are admissible. See Breedlove v. State, 413 So.2d 1 (Fla. 1982). Another eyewitness to the transactions is available to the state to make an in court identification of appellee. Since the taped statements of Ms. Campbell are not excludable on the basis of a hearsay objection, the trial judge erred in suppressing them. (emphasis added)

Ibid.

Petitioner's application for discretionary review was granted and the case is now before this Court.

III SUMMARY OF ARGUMENT

A non-final pretrial order striking evidence on the ground that it constitutes hearsay is not an order suppressing evidence obtained by search and seizure. The state may not appeal the order under Florida Rule of Appellate Procedure 9.140(c)(1)(B) when the ruling is made on a ground unrelated to any issue of illegal search and seizure.

The district court erred by reversing the trial judge on the question of hearsay. The only method of review available to the state was common law certiorari, which allows the district court discretion to grant relief if the trial judge has departed from the essential requirements of law and there is no adequate remedy by appeal.

Certiorari should not have been granted in this case because the informer's statements were hearsay. The informer, who was the declarant of the statement, was not going to testify and consequently her out of court statements of identity were inadmissible. The trial judge did not depart from the essential requirements of law by striking the informer's statements on the tape recording and the district court, therefore, should not have reversed the order being reviewed.

IV ARGUMENT

ISSUE PRESENTED

A PRETRIAL ORDER OF THE CIRCUIT COURT STRIKING PORTIONS OF A TAPE RECORDING ON GROUNDS OF HEARSAY IS NOT APPEALABLE BY THE STATE AS AN ORDER SUPPRESSING EVIDENCE OBTAINED BY SEARCH AND SEIZURE; AND COMMON LAW CERTIORARI COULD NOT HAVE BEEN GRANTED AS AN ALTERNATIVE REMEDY IN THIS CASE BECAUSE THE CIRCUIT COURT DID NOT DEPART FROM THE ESSENTIAL REQUIREMENTS OF LAW.

The jurisdictional issue presented to the district court was whether the circuit court's pretrial order striking portions of an informer's statements on a tape recording was appealable by the state under Florida Rule of Appellate Procedure 9.140(c)(1)(B). The rule says:

> (c) Appeals by the State.
> (1) Appeals Permitted. The State may appeal an order:
>
> * * *
>
> (B) Suppressing before trial confessions, admissions or evidence obtained by search and seizure.

On its face, the order which the state sought to appeal did not suppress evidence. The petitioner's first motion sought suppression of the entire tape recording on the ground of an illegal interception of communications. Had that motion been granted the state unquestionably could have appealed under Rule 9.140(c)(1)(B). The trial judge denied the suppression motion but granted a second defense motion which sought to excise from the tape the statements of an informer who would not be present at trial. This motion

was granted on the basis of hearsay, not illegal search and seizure.

The First District Court of Appeal recognized that an order based on illegal search and seizure was different from one based on an evidentiary ground, but held that the state could still appeal because the evidence had been obtained by search and seizure.

In State v. Steinbrecher, 409 So.2d 510 (Fla. 3d DCA 1982) the state sought to appeal a pretrial order granting a defense motion to exclude a tape recording because it was not intelligible and audible. The Third District Court held that Rule 9.140(c)(1)(B) did not authorize an appeal by the state because the ruling "was based on the intelligibility and audibility of the tape and did not involve issues of suppression of pre-trial confessions, admissions, or evidence obtained by search and seizure...". 409 So.2d at 510,511.

The Steinbrecher ruling is correct and should be approved by this Court and the first district's contrary ruling in this case is incorrect and should be reversed. A motion to suppress is a vehicle to test lawfulness of the method by which evidence was obtained.[2] A motion to suppress tangible evidence is governed by Florida Rule of Criminal Procedure 3.190(h), which allows a defendant

[2]Black, Law Dictionary, 1291 (5th Ed. 1979); See, McCormick, Evidence, 423-429 (2nd Ed. 1972).

"aggrieved by an unlawful search and seizure" to move "to suppress anything so obtained" because (1) the property was illegally seized without a warrant, or (2) the warrant was insufficient, or (3) the property seized was not described in the warrant, or (4) there was no probable cause for believing the grounds on which the warrant issued or (5) the warrant was illegally executed. These grounds all relate to the way the state acquired the evidence. They do not relate to hearsay issues which arise under the evidence code.

The function of a motion to suppress evidence is to test the legality of a search and seizure. In Robertson v. State, 94 Fla. 770, 775, 114 So. 534 (Fla. 1927) this Court said:

> In and of itself, a motion to suppress evidence obtained by illegal means, when interposed prior to arraignment, is not a part of the trial upon the issues. It is a preliminary or ancillary proceeding for the purpose of determining an issue collateral or incidental to the issue raised by the indictment and plea, namely, whether or not the questioned evidence was lawfully obtained by the state. (Emphasis Added)

Under Florida Rule of Criminal Procedure 3.190(h)(4) a motion to suppress evidence must ordinarily be made before trial.

In Savoie v. State, 422 So.2d 308, 311 (Fla. 1982) this Court said:

> This rule is designed to promote the orderly process of trial by avoiding the problems and delay caused when the trial judge must interrupt trial,

> remove the jury from the courtroom, and hear argument on a motion to suppress that could easily have been disposed of before trial. Davis v. State, 226 So.2d 257 (Fla. 2d DCA 1969). Also, when the rule is complied with, the state is afforded an opportunity to appeal the ruling of a trial judge in the event the evidence is suppressed; when the judge rules at trial to suppress evidence, the state is foreclosed from appealing that decision. See Fla.R.App.P. 9.140 (c)(1)(B).

The court held that the trial judge has discretion to consider a motion made during trial and should balance the defendant's rights to due process and effective assistance of counsel against the rights of the state to appeal an adverse ruling on the suppression motion.

In contrast, there is no rule requiring that motions other than suppression be made before trial; a defendant does not commit a procedural default by not moving in limine before trial nor is the state being deprived of a right to appeal when no pretrial motion is made.

The state has no right to appeal pretrial orders except those specified in the rules of appellate procedure;[3] a motion in limine to strike evidence on evidentiary grounds like hearsay is not mentioned in the appellate rules and an order granting the motion is therefore not appealable.

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[3] R.J.B. v. State, 408 So.2d 1048 (Fla. 1982); State v. Smith, 260 So.2d 489 (Fla. 1972); see, Art. V, § 4(b)(1), Fla.Const.

The district court here allowed the state an appeal when the constitution and rules do not allow one. The court's reasoning that the tape had been obtained by a search and seizure missed the point. The trial judge did not declare the evidence inadmissible because of an illegal search and seizure.[4] The appellate court should have observed the distinction made in State v. Brown, 257 So.2d 263, 264 (Fla. 3d DCA 1972) that:

> The inquiry on a motion to suppress is different than the inquiry at the time of trial as to the admissibility of the evidence. The only question before the court on a motion to suppress is the validity of the seizure. Robertson v. State, 94 Fla. 770, 114 So. 534. Objections that go to admissibility are to be present at the time the evidence is tendered.

The petitioner could have and possibly should have waited until the tape was offered into evidence at trial before objecting on the basis of hearsay. Obviously the state could not have then obtained appellate review in any form. By making the motion earlier than necessary the petitioner did not give the district court appellate jurisdiction which it did not have. The motion in limine had the laudable effect of reducing the delay during trial that would have resulted from an objection. The courts should encourage efforts to have evidentiary issues ruled on before, rather than during, a trial. This

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[4] See, D.J.C. v. State, 400 So.2d 830 (Fla. 3d DCA 1981) (motion to suppress not preserved when only objection at trial is relevancy).

policy will be discouraged, however, if the state is allowed an unauthorized appeal to review rulings on admissibility of evidence unrelated to search and seizure.

The intent of Appellate Rule 9.140(c)(1)(B), read in conjunction with Criminal Rule 3.190(h) is to allow the state to appeal only when the issue relates to suppression; and suppression means the grounds specified in Rule 3.190(h).

The ruling of the trial judge in this case was not a suppression order and was not appealable by the state. The district court erred by taking jurisdiction of an appeal when there was no right of appeal.

Should this Court agree that the state was wrongfully granted an appeal, the next question is whether any other avenue of review was available to the state. The courts of appeal have allowed the state to petition for a writ of common law certiorari to review pretrial orders on the theory that no other adequate remedy exists because there can be no appeal following an acquittal. State v. Steinbrecher, supra; State v. Horvatch, 413 So.2d 469 (Fla. 4th DCA 1982) (reversing order permitting defendant to introduce polygraph evidence); State v. Williams, 442 So.2d 240 (Fla. 5th DCA 1983) (pretrial ruling that proof of a stolen item is an essential element of solicitation to commit trafficking in stolen property); State v. Maisto, 427 So.2d 1120 (Fla. 3d DCA 1983) (order granting motion

in limine prohibiting state's use of similar fact evidence).

The propriety of common law certiorari to review pretrial orders is, however, now in doubt. In State v. C.C., 449 So.2d 280 (Fla. 3d DCA 1983) (en banc) the court said that Article V, Section 4(b)(1) "permits interlocutory review only in cases in which appeal may be taken as a matter of right". The cited section of the Constitution states:

> District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts...not directly appealable to the supreme court or a circuit court. They may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court.

The district courts are split on the question whether the constitution grants the state the right to appeal final judgments in criminal cases, subject to double jeopardy limitations. See, e.g. State v. C.C., supra; State v. G.P., 429 So.2d 786 (Fla. 3d DCA 1983) (no right of appeal and no right to certiorari review of final judgment; question certified); contra State v. J.P.W., 433 So.2d 616 (Fla. 4th DCA 1983) (state has a constitutional right to appeal a final judgment discharging a juvenile because of speedy trial violation and if no appeal exists state may petition district court for writ of common law certiorari; question certified); State v. W.A.M.,412 So.2d 49 (Fla. 5th DCA 1982) (state has a constitutional right of

appeal from final judgments in juvenile cases). These decisions do not directly reach the issue here, which is whether the district courts have jurisdiction to review an interlocutory order in a criminal case by writ of common law certiorari, but the rationale in some of them may affect the question. For example Judge Schwartz is now of the view that State v. Steinbrecher should be "critically" reconsidered because

> the prerequisite for certiorari consideration that any remedy by appeal is "inadequate" [citation omitted] necessarily implies that a right to appellate review from an adverse final judgment exists in the first place. In any criminal prosecution in which the state seeks an otherwise unauthorized review of a pre-trial ruling, however, it of course does not.[5]

Assuming, however, that the district court had jurisdiction to consider the issue under common law certiorari, it would have erred by granting the writ. This Court can and should reach the merits of the order striking the tapes. Once this Court has acquired jurisdiction of a cause it may consider all issues appropriately raised in the appellate process, as though the case had originally come as an appeal. Savoie v. State, 422 So.2d 308 (Fla. 1982). A review of the merits, moreover, is necessary to determine whether the district court would have correctly exercised its discretion

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[5] State v. Whitehead, 443 So.2d 196, 197, n.1 (Fla. 3d DCA 1984) (Schwartz, C. L., specially concurring).

in reversing the trial judge under the standard which governs certiorari as opposed to appellate review.

In Combs v. State, 436 So.2d 93, 95-96 (Fla. 1983) certiorari was described this way:

> In granting writs of common-law certiorari, the district courts of appeal should not be as concerned with the mere existence of legal error as much as with the seriousness of the error. Since it is impossible to list all possible legal errors serious enough to constitute a departure from the essential requirements of law, the district courts must be allowed a large degree of discretion so that they may judge each case individually. The district courts should exercise this discretion only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.

As petitioner asserted in the district court, certiorari should not have been granted because there was no departure from the essential requirements of law, which is the traditional test for issuing the writ. Scholastic Systems, Inc. v. LeLoup, 307 So.2d 166 (Fla. 1974). The trial judge was not even wrong. He was right! The statements of the informer on the tape were being offered to prove identification and when used for that purpose were hearsay in the absence of the informer at trial. The state admitted that identification was one of the purposes of the taped conversations when the prosecutor said they would show that "Mr. McFadder was a participant in the narcotics transaction" (T-31,32). These passages show that notwithstanding its disclaimers, the state affirmed that it intended to rely on

Campbell's statements to prove the identification of the accused. This purpose was later cemented with these post motion comments by the state:

> THE COURT: Does the granting of the motion to suppress as to the statements of Mae Campbell go to the heart of the State's case?
>
> MR. CLARK: Yes, Your Honor, I believe it does.
>
> MR. MURRAY: It corroborates two of the key witnesses, Your Honor -- or the key witness, Ella Daniels and her identification, the fact that she was in contact with Clyde McPhadder, and it corroborates. What it does, it essentially takes away from the State some of the evidence which we would use to corroborate our main prosecution witness who was a party to the transaction, thus, it does in fact limit the State's case.
>
> * * * *
>
> In this case we've essentially got one on one. Ella Daniels says that Clyde McPhadder sold her controlled substances. Then that evidence does in fact become crucial. It is of a corroborating nature and it cannot be said to be diminumus.

(TR-36,37).

Despite these assertions in the trial court, the state was able to convince the district court that the informer's statements "were not being offered by the state to prove the truth of the matters she asserted thereon, but instead... were being presented into evidence for the purpose of showing that appellee engaged in conversation with Ms. Campbell and took part in plans to supply illegal drugs to her". 452 So.2d at 1018.

This ruling by the district court is plainly self-contradictory. If the statements were not offered to prove the truth of what they asserted, they could not at the same time serve to prove as truth that petitioner "engaged" in conversation and "took part" in plans. The district court somehow missed the point that the purpose of the statements was to prove what the court itself acknowledged was their truth; the alleged identity of petitioner as a party to a drug transaction.

The issue is whether out of court statements of identification by a person who is not (or will not be) present at trial are hearsay.

Hearsay is defined in Section 90.801(1)(c), Florida Statutes as:

> [A] statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Here the state was admittedly trying to establish or corroborate the identity of petitioner by using the out of court statements of a witness who would not be testifying at trial. On the face of it, that sounds like hearsay as defined by Section 90.801(1)(c). There is more.

The evidence code specifically addresses identification testimony and by implication brands as hearsay out of court identifications except when the identifying witness testifies. Section 90.801(2)(c), Florida Statutes, states:

> (2) A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is:
>
> * * * *
>
> (c) One of identification of a person made after perceiving him.

If, on the other hand the declarant does not testify, the out of court statement of identification is impliedly hearsay under the code. The cases go beyond implication and forthrightly say that unless the identifying witness testifies and is subject to cross-examination the out of court identification is hearsay and inadmissible.

The leading case is State v. Freber, 366 So.2d 426 (Fla. 1978) which presaged the evidence code by adopting the rule of admissibility of out of court identification provided the identifying witness testified at trial.

In allowing prior identification as substantive evidence this Court observed that its ruling would preserve the protections that would otherwise render the hearsay evidence unreliable, saying:

> Hearsay testimony is generally inadmissible for three reasons. First, the declarant is not testifying under oath. Second, the declarant is not in court for the trier of fact to observe his or her demeanor. Third, and of prime importance, the declarant is not subjected to cross-examination in order to test the truth of the statement. 5 Wigmore, Evidence § 1362 (Chadbourn rev. 1974); McCormick, Evidence § 245 (2d ed. 1972). In the instant case, Mrs. Hayes took the stand and testified concerning her prior

> identification. Therefore, the defendant was allowed an opportunity to confront and cross-examine the hearsay declarant, Mrs. Hayes, and the prime dangers of hearsay testimony were avoided.
>
> * * * *
>
> The prior identification is reliable evidence of identity, and the declarant's presence in court and availability for cross-examination eliminate the usual dangers of hearsay testimony.

366 So.2d at 427, 28.

In Lyles v. State, 412 So.2d 458 (Fla. 2d DCA 1982) the Court held that statements of identity, including a photographic identification, made by a four year old sexual battery victim to a police officer were not admissible because the child did not testify. The state contended on appeal that the officer's testimony was admissible but the Court said:

> Section 90.801(2)(c), Florida Statutes (1979), provides that a statement is not hearsay if the declarant testifies at the trial and is subject to cross-examination concerning the statement and the statement is one of identification of a person made after perceiving him. This statute does not support the appellee's position because Heather [the victim] did not testify at trial.

412 So.2d at 459.

The district court's decision that the informer's statements were not offered to prove their truth, i.e., petitioner's identity, relied only on Breedlove v. State, 413 So.2d 1 (Fla. 1982). That case was inapposite because the court itself had already found that one of the purposes

of the statements was proving petitioner's identity as a participant in the tranasactions. In order to prove participation it was necessary for the state to rely on the truthfulness of the absent informer's statements on the tape identifying petitioner. Those statements were therefore offered to prove the truth of what they asserted and constituted inadmissible hearsay. The trial judge did not depart from the essential requirements of law striking the taped statements from the evidence.

Additionally, none of the other statements made on the tape by Ms. Campbell would be admissible under the ruling of this Court in Tollett v. State, 272 So.2d 490 (Fla. 1973). There the informer, who did not testify, had several telephone conversations with the defendant. All the conversations were tape recorded, including one which was listened to by a police officer, and the tapes were admitted into evidence and played. The Court held that the informer should have testified on the issue of consent to having the conversations intercepted and also said:

> Davis [the informer] should have been produced by the State as a witness to afford Tollett opportunity to cross-examine Davis in order to "controvert, explain or amplify" the testimony of Captain Campbell [the police officer] concerning Davis' alleged consent and the State's hearsay claim of what Davis allegedly said in the intercepted communication.

* * * *

> If the procedure adopted by the State in this case were approved it would be precedent . . . that at trial the State may introduce an unwarranted intercepted communication without the presence of the alleged participating informant as a material witness to testify as to his consent to the interception or to confirm the hearsay statements attributed to him in the intercepted communication were his. It eliminates an accused's opportunity to cross-examine the alleged informant and opens the door for admission of hearsay testimony of an alleged participant in a communication who is not produced as a witness. (Emphasis added)

272 So.2d at 495. Tollett, decided before the adoption of the evidence code, requires exclusion of all the informer's statements, not just those of identification. It is controlling because that portion of the ruling is based upon constitutional grounds, fundamental fairness as well as Article I, Section 12 of the Florida Constitution.

Even if the only statements to be excised are those of identification, the trial judge's order was correct under the evidence code. By no means could the order be a departure from the essential requirements of law. The state failed to carry the burden of demonstrating any error, and certiorari should have been denied by the district court.

Finally, even if the district court's decision on jurisdiction were correct, its decision on the merits was not. The statements were hearsay and should have been stricken.

V CONCLUSION

The decision of the district court should be reversed with directions to the district court to deny the petition or appeal of the state.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand to Mr. John W. Tiedemann, Assistant Attorney General, The Capitol, Tallahassee, Florida, and a copy has been mailed to petitioner, Mr. Clyde McPhadder, 909 Northeast 25th Terrace, Gainesville, Florida, 32601, this 19th day of February, 1985.

MICHAEL J. MINERVA